



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,488	04/06/2005	Enok Tjotta	5051-639	5328

466 7590 09/11/2007
YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

EXAMINER

REDDIG, PETER J

ART UNIT	PAPER NUMBER
----------	--------------

1642

MAIL DATE	DELIVERY MODE
-----------	---------------

09/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,488	Applicant(s) TJOTTA, ENOK	
	Examiner Peter J. Reddig	Art Unit 1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/6/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 13-27 are pending and under prosecution.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because it cannot be determined what the methods of independent claims 13 and 14 are drawn to or what steps are required. The claims give no indication for what the methods for *in vivo* or *in vitro* tests will be used. Furthermore, it cannot be determined if the separate tests claimed within the methods are different steps of the same method to be performed together or separate tests to be performed individually. Thus the metes and bounds of the claims cannot be determined.

Additionally, claim 24 is indefinite because it cannot be determined to what the method of claim 24 is drawn. It cannot be determined if the claim is drawn to treating or prevention of cancer alone, atherosclerosis, autoimmunity, rejection of transplants, inhibiting viral growth or some combination thereof. Thus the metes and bounds of the claim cannot be determined.

The term "the influence", in claims 13 and 14 is a relative term which renders the claims indefinite. The term "the influence" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined the

Art Unit: 1642

construction of the claims or the teachings of the specification the amount of influence required to meet the limitations of the claims.

The term "clone stimulating", in claims 13 and 14 is a relative term which renders the claims indefinite. The term "clone stimulating " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined the construction of the claims or the teachings of the specification the amount of stimulating required to meet the limitations of the claims.

The term "degree of neutralization", in claim 13 is a relative term which renders the claims indefinite. The term " degree of neutralization " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined the construction of the claims or the teachings of the specification the degree of neutralization required to meet the limitations of the claims.

The term "influencing the development of metastasis", in claims 13 and 14 is a relative term which renders the claims indefinite. The term " influencing the development of metastasis " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined the construction of the claims or the teachings of the specification the amount of influencing required to meet the limitations of the claims.

The term "increase of local cell concentration or collocation", in claims 13 and 14 is a relative term which renders the claims indefinite. The term " increase of local cell concentration

Art Unit: 1642

or collocation " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined the construction of the claims or the teachings of the specification the amount of increase that is required to meet the limitations of the claims.

The term "locally high density", in claim 20 is a relative term which renders the claims indefinite. The term "locally high density" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined from the construction of the claims or the teachings of the specification the density that is required to meet the limitations of the claims.

The term "not densely collocated", in claim 24 is a relative term which renders the claims indefinite. The term "not densely collocated " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined from the construction of the claims or the teachings of the specification the density that is required to meet the limitations of the claims.

The terms/phrases potential drugs, potential toxins, components from physiological or pathological processes, other ways, cells that were analogous to metastasizing cells, special growth factor(s), special gels, other physical effects, in claims 13, 14, 15 and 24 render the claims indefinite because the terms are not defined by the claims or the teachings of the specification and it cannot be determined what is intended to be encompassed by these

Art Unit: 1642

terms/phrases. Thus ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Regarding claims 13, 14, 16, and 20 the phrases "for example", "e.g.", and "for instance" render the claims indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 13-27 are also indefinite because claim 13, 14 and 24 do not contain a positive process step which clearly relates back to the preamble.

3. Examiner has attempted to point out the points of informality in the claims as currently constituted. Given the convoluted, internally inconsistent, indefinite nature of the claims, Examiner is unable to determine the metes and bounds of the patent protection claimed because the claims as currently constituted are incomprehensible. The burden is on the applicant to revise the claims to render them in proper form for a complete examination (see MPEP 701.01).

4. No claims are allowed.

5. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the claimed system must be clearly and positively specified. The system must be organized and correlated in such a manner as to present a complete operative device. Please consult MPEP for information drawn to proper format for claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Reddig whose telephone number is (571) 272-9031. The examiner can normally be reached on M-F 8:30 a.m.-5:00 p.m.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

Art Unit: 1642

supervisor, Shanon Foley can be reached on (571) 272-0890. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peter J. Reddig
Examiner
Art Unit 1642

PJR

SUSAN UNGAR, PH.D
PRIMARY EXAMINER

